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AUG 16 2004

OFFICE OF PETITIONS

In re Application of
Droque et al.
Application No. 10/628,588
Filed: July 28, 2003
Attorney Docket Number: 6970.02
Title of Invention: FLUID AND BIOAEROSOL
MANAGEMENT

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR §1.47(a), filed June 25, 2004.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on July 28, 2003, without a signed oath or declaration and naming Jeffrey Droque, Leonard Schultz and Barry Thompson as joint inventors.

Accordingly, on October 27, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring for the purposes of this decision, an executed oath or declaration and a \$65.00 surcharge for its late filing.

In response, on February 23, 2004, applicant submitted a petition, the \$65.00 surcharge for late filing oath or declaration fee, and a partially executed declaration naming, Jeffrey Droque, Leonard Schultz and Barry Thompson as joint inventors. A petition filed under 37 CFR 1.47 was dismissed on April 26, 2004.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

As to item (1), rule 47 applicant has failed to show that co-inventor Droque was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The petition and the copy of the e-mail

provided states only assignment and power of attorney documents were sent to the non-signing inventor. Unless inventor Droque was presented with a copy of the application papers (specification, claims and drawings), he could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration which he was given. The fact that inventor Droque reviewed the provisional application does not mean applicant is not required to present the entire non-provisional application for inventor Droque's review. Inventor Droque must be presented with the opportunity to review and sign the application papers before rule 47 status will be granted. Petitioner's arguments that Droque was appraised of the application and understood the invention are not persuasive.

The \$130.00 petition fee is being returned to deposit account 04-1420 as an additional fee is not required where petitioner timely submitted a request for reconsideration.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
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Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By delivery service:
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Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251 until September 24, 2004, thereafter (571) 272-3215.

Charles R. Chung

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Office of Petitions